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Pershina, Yulia

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## Punishments for crimes against religion and Christian church in the roman criminal law

### Abstract

The paper is devoted to the actual theoretical problem -crimes against religion and Christian Church and punishments for them on the example of criminal law in the Ancient Rome. The author considers structure of crimes against religion and Church, the system of punishments corresponding to them according to the Roman criminal law.

### Keywords

crime, punishment, religion, Christian Church, Roman criminal law

### Yulia Pershina

PhD in History, Associate Professor, Vyatka State University, Kirov, Russia  
[ule4kina@yahoo.com](mailto:ule4kina@yahoo.com)

Religiousness of the Roman outlook can be considered as a feature of the Roman right, having a sacred origin according to representations of Romans. Violation of firmness of public life foundations fixed in Laws of XII tables was cruelly punished (*Ivanov, 2012*).

Any person could become accused of crimes against religion, even the slave, irrespective of age and sex. The restrictions connected with sanity of a person did not work here. The Roman female involved in execution of religious ceremonies could be the criminal too (*Prudnikov, 2010*). For example, non-observance of religious instructions or norms of public morals could lead to immuring in a wall of the priestess goddess Vesta or nun (*Omelchenko*)

According to the civil right, such categories of criminals as murderers accused of adultery and girls' kidnappers, who were looking for shelter could be detained directly from the room of a temple (*Krashennikov, 1999*).

The imposed sentences for the crimes connected with violation of religious foundations often depended on eminence, origin, age, sex of an accused person. For example, the VII book of the treatise "To pro-council's obligations" written by the famous Roman lawyer Ulpianus (170 – 228) told about the pro-consul's duties: "However, it is necessary to moderate punishment to fight with animals on the arena for ones, who make burglary in the temple at night and carry away gifts to a deity from there" (*Loginov*). He specified that if theft from the temple was made in the afternoon, penalty was commuted - accused person was forced to work at mine; if the criminal was the notable person, there was an opportunity to banish him on the island (*Kudinov, 2009*).

Before Christianity became the official religion the Roman right hadn't had such crime as blasphemy. Believing in a great number of gods (for example, in Jupiter, Saturn, Juno, etc.), and esteeming house patrimonial cults, Romans calmly treated their greatness. Romans believed that gods could protect themselves: "People nearer in purity to gods, with godliness ... Who behave differently, would be punished by god" (*Ivanov, 2012*).

Toleration in Rome was widespread as much, as foundations of the Roman society allowed. It was impossible to propagandize cults of gods of other people. For example, for this reason 170 BC in Rome the temple of the goddess Isis was destroyed, and in 132 BC Phrygian priests were expelled from the city.

During the period of the Roman republic, sacrilege was understood as denial of the state religious cults. Non-obedience to "divine" laws could not be forgiven on the formal bases.

Even the reasons of prosecution of the first Christians, according to the Russian historian A.A. Ivanov, "were in the sphere of the right, more than in the field of ideology" (*Ivanov, 2012*). Secret night meetings of believers were declared criminal actions even since Laws of XII tables writing about threat from such associations to the people and the Roman state. The first Christian communities were created with violations of the established order and forms; therefore they had a character of the "unlawful" organizations. According to the existing legislation, some aspects of Christian activity were also qualified as criminal.

During the Roman Empire, Christians were executed for refusal to say a principle "The master and our god". Romans referred firmness and endurance of Christian criminals to manifestations of sorcery.

After recognition of Christianity as the state religion, the Roman right included new structure of crimes against religion (*Ivanov, 2012*). The crimes were the following: negligent execution of religious duties; encroachment on the order, established by Catholic Church, and on church services; attempt at inviolability of Christian temples (for example, thefts in churches, violation of the temple territory, sacrilege in relation to cult subjects, etc.); criminal forms of different faith (heresy, paganism) (*Prudnikov, 2010*).

The property of heretics was confiscated, but according to the civil right it could be given to the heretic's sons if they were Christians. The property of criminal in relation to Catholic Church also could be returned to his sons by the civil right (*Krasheninnikov, 1999*).

Gradually the punishments prescribed by the Bible began widespread. For example, suicide, violation of Church instructions to marriage prohibitions (related marriages, incest) considered punishable (*Omelchenko, 2007*). By the civil right, incest with a nun was punished by death penalty (*Krasheninnikov, 1999*).

Blasphemy was punished in a similar way. The church condemned attempts of future prediction: the prophet was executed for "false predictions" (*Krasheninnikov, 1999*).

In some cases, the Roman criminal justice revived symbolic law of talion, sentencing to special forms of death penalty for the crimes connected with belief: for example, to shoot soldiers by arrows, to dig women in the ground, to excoriate preachers, etc. (*Omelchenko, 2007*).

The Codex Theodosianus is of great interest. It is the monument of the right made during the rule of Theodosius II (408-450). The Code included XVI book titled "About Universal or Catholic Church".

According to the domestic historian of antiquity V. I. Kuzishchin, before inclusion of XVI book in the Codex Theodosianus, questions connected with religion were not "independent objects of law-making", were not considered separately from internal political and economic situations, etc. (*Kuzishchina, 2005*).

In XVI book, the main questions concern religion. They are separated from other legal aspects for the first time. The complex of norms religious in character and contents resulted. There was an independent religious right in the Roman right.

The main maintenance of this branch of the right was the norms devoted to the organization and activity of Christian religion and Catholic Church. They can be considered as the main source and condition of emergence of the initial right in later time. There is no law, in which the various questions of activity of Christian Church would not be raised, in 201 laws placed in the book.

The laws containing the Nicene Creed and directed on its realization; the laws formulated the concept "religious crime", regulating trial and jurisdiction on religious affairs; the laws defining punishments for the crimes against Christians and Catholic Church and formulated their types are of great interest.

The Roman state pursued pagans and heretics. If the person made sacrifice in the pagan temple, it was recommended "to strike him from feet the revenging sword", and to confiscate his property in imperial treasury. Pagans were deprived to make the will.

If the judge visited the pagan temple as "an impious violator", he paid a fine of 15 gold pounds. His subordinates had to bring a similar penalty in favor of fisk, if they did not state objections against visiting a pagan sanctuary.

The Codex Theodosianus understood heretics as people, "who can be convicted of evasion even from the only point of the doctrine of Catholic religion". Heretical books had to be burned under the judge control. If someone hid them at himself, he would be sentenced by death penalty.

Secret heretic meetings were forbidden. Buildings for these meetings were confiscated in favor of imperial treasury. Heretics were forbidden to teach others to the belief, make sacraments and wills.

Anomoeans, Macedonians and Arians were exiled out of borders of the Roman state (*Kuzishchina, 2005*).

Ariane are the followers of the religious trend of the IV-VII centuries, which arose in the Roman Empire and was called by the name of his founder Arius, priest in Alexandria (256-336).

Arius told that Jesus Christ is creation of God the Father. Arius and Alexander, the bishop of Alexandria disputed on essence of the Son of God and his similarity with God the Father since 318. As the result, Arius was condemned and exiled from Alexandria.

Dispute between Arius opponents and supporters led to convocation of the I Universal cathedral, on which the Arius doctrine was condemned as heresy. Arius was expelled to Illyria. God Unity (unity and similarity of God the Father and the son of God: "it is not merged in essence, but also it is not divided") found the reflection in the Nicene Creed.

The Pneumatomachi (Macedonians) were the religious sect, founded by one of Arius' followers Macedonius, the bishop of Constantinople (355-359). Pneumatomachi did not recognize the doctrine about the Holy Trinity and considered that the Holy Spirit is created as well as Angels and is under supervision at God the Father and Jesus Christ. The Macedonius' doctrine was condemned on the Constantinople Universal cathedral in 381 AD (*Vorobyova, 2004*).

Eunomians (Anomoeans) were Eunomius followers. They were called Anomoeans for rejection of the Nicene Creed. They professed the heretical doctrine, according to which the essence of God the Son differs from essence of God the Father, and Jesus Christ is creation of God the Father, the first and surpassing everything. Except the Antioch deacon Aetius, who died in 366 BC, the leaders of the doctrine was Eudoxius, the bishop of Antioch in 357-360, and then the bishop of Constantinople in 360 - 370 (*Filatov, 2011*).

The Roman state pursued the religion of Phrygia, heretical currents of Manicheans and Priscillians.

The Phrygian religion was formed on the basis of Phrygian breeding cults and dogmas of the ancient Greeks. In its center, there was a cult of the goddess-mother Cybele and her son, dying and reviving god Attis. To avoid harassment of the mother Attis sacrificed himself and died under a sacred tree - pine. However, the goddess loved Attis and promoted his revival.

Spring holidays of Phrygians were devoted to these events. Within this cult, orgies and self-sacrifice of priests were made. They devoted themselves to god Attis, exempted from passions by such religious rites (*Lubsky*).

Manicheans were the followers of the religious trend founded by Mani (216-276) in the III century in Persia. They considered Mani to be a prophet. Fight of the good and evil, light and darkness, as opposite principles of life was the cornerstone of Mani's doctrine. Jesus Christ was considered to become from a kingdom of light and devil - from a kingdom of darkness. The devil concluded soul of the world in bonds of a matter and created the Universe and a person. According to Manicheans, the soul of the world, i.e. particles of light god, is, not only in a person, but also in the whole nature (*Vorobyova, 2004*).

The Spanish heresiarch, the bishop of Avila, Priscillian (340 - 385) studied the Egyptian religious views and Mani's doctrine. Priscillians borrowed the provision on fight of good and evil, God and Satan from Mani's religion. Thus, Arimanius became the creation of a matter, and the terrestrial world left the Satan's hands. Priscillians considered that Earth is coped by spirit of darkness and demons, what explains the existence of chaos and evil.

The soul of a person proceeds from God, before emerging in a human body it stays in the heavenly world. Demons of evil entice it from there, and then place in a corporal cover. If the soul could not find killing of passions of perfect purity, demons force it to replace several bodies. Only then, the soul can return to God and stay in a kingdom of light or, more precisely, in one of star spheres.

Priscillians suggested studying astronomy, zodiac signs, since they attributed special influence on a person's body to stars. If souls settle on stars and have communication with them, studying the last gives the grounds to judge the soul, its virtues and sufferings. Each

being, who looks for a place on a good star, has to move further away from a matter. Therefore, they considered strict life, abstention from meat and wine, posts, prayers, chastity make a moral basis.

This doctrine was widespread in Spain and Gallia. Aquitaine and Narbonensis province became the centers of priscillian heresy.

Priscillian's doctrine was condemned in 380 in Zaragoza and in 5 years in Bordeaux. The emperor Magnus Maximus (335-388) ordered to execute heretics (*Osokin*).

Their property was confiscated, but it could devolve to Catholic relatives. To heretics it was forbidden to trade and sign contracts.

Land property, where heretics arranged secret meetings, were confiscated in favor of imperial treasury. If the owner of land did not know about meetings, and the inspector of a manor was aware, the last one was beat by a lash with lead and sent for lifelong penal servitude on mine, and the main tenant of the land was banished. If the governor of the province softened punishments to heretics, he paid a fine of 12 gold pounds and his subordinates - of 10 gold pounds in favor of imperial treasury (*Kuzishchina, 2005*).

The Roman state severely pursued Donatists. It was the religious movement in the Roman North Africa in the IV-V centuries. The Donatists heretical current arose in 311, when the part of the African Churches refused to recognize lawful election of Cecilianus as the the bishop of Carthage. It was the beginning of African Christian Church schism on Catholic Cecelians and their opponents, after called Donatists (by the name of their head the Numid bishop Donat).

As representatives of the dominating estates supported the Christian Church in North Africa, the operated colons, slaves and city poor began to join Donatists. From the middle of the IV century, the movement gained the character oppositional to the Roman power. Besides, the donatists church supported the revolts against Rome headed by leaders of Mauritian tribes - brothers Firm (371-373) and Gildon (397-398). But performances of rank-and-file members of a community against large feudal lords (in particular, agonistics, i.e. "fighters") caused fears at the top of Donatists, which even invited the Roman troops for suppression of these disorders. Already by the end of the IV century, Donatists were adjoined the anti-Roman adjusted part of a ruling class. In 411, after the Carthage cathedral, where both Catholics, and Donatists were presented, the Roman authorities declared prohibition of Donatism (*Big Soviet encyclopedia, 1969-1978*).

Donatists paid penalties from 10 silver pounds to 50 gold pounds for belonging to heresy in favor of the imperial fisk, depending on estate. For example, the highest officials of the empire (pro-consul, vicar, comets of the first category) were exposed to a fine of 200 silver pounds; senator -100 silver pounds; ecclesiastic - 100 silver pounds; Decurion - 10 silver pounds.

If after collection penalties (maximum 5 times), the heretic did not renounce the belief, he was punished by exile for borders of the Roman state or confiscation of property. The lowest officials of the empire-Donatists and colons-Donatists after fivefold collection of penalty were punished by beating with birches. If someone helped fluent heretics, this person was the subject to similar punishments with confiscation of property.

Sometimes the highest ecclesiastics of heretics were sent into exile to the remote islands and provinces. If there they built buildings for secret meetings by their own money, local authorities took away these constructions from them and transferred to the possession of Catholic Church.

Transition of heretics and pagans to Catholicism was encouraged in every possible way. Their prosecution after a baptism stopped. If children of Jews or Samaritans accepted Christianity, their parents could not disinherit them: such wills appeared invalid (*Kuzishchina, 2005*).

The great interest has the treatise "About distinction between the initial right and civil right" of the Pisa judge and teacher of Pisa university S. Bartol (1313 or 1314-1357), since it reflects features of development of the initial right in the Roman legislation.

According to the initial right, all crimes against Catholic religion and Christian Church began to be considered as public ones. For example, for incest with nun, blasphemy of the clergyman defrocked, and the layman was separated from Church. The guilty bore responsibility for damage of church property.

The robbers and murderers looking for shelters in church could be detained.

Justice was put in action by a call of both parties in court. The judge had to inform officially the person that he needs to be on court session in certain time. After adjudgement, the condemned had no right to accuse the claimant. However, if the accuser could not produce the convincing evidence to the claim, he became the subject of church repentance. If the claimant did not receive absolution in this case, he was guilty.

Tortures of the defendant were forbidden. Indications of witnesses were used as proofs of criminal cases. Even one witness was taken into account, if there were no inconsistent data. On the new, only opened during the trial circumstances, other witnesses could be invited in court. In case of the appeal, if the witnesses passing on the this case had already gave evidences, they repeatedly were not subpoenaed any more.

The woman could not testify in court. Persons being under examination also could not act as witnesses. Old men and patients, in case of need, could be forced to give evidences. To recruit the minor in trial, the consent of his father was not required.

The person using "ill fame" in the Roman society (for example, not observing religious canons) could be suspected of crime commission, but unconfirmed slander conducted to an excommunication from Church of the "talking scandal" claimant. On a sentence of the bishop, it was possible to appeal to the archbishop or to the Pope.

The brother had no right to accuse the brother of heresy, but the father could testify against children. The property of the heretic was confiscated; it could not devolve to his sons any more, even if they were Christians. The property of criminals also passed into church treasury.

If the condemned died, his body was recommended to inter, despite his crimes (*Krashennnikov, 1999*). The criminal-legal aspect of religious societies activity in the Roman state was connected with legal definition of the actions qualified as criminal. As the criterion acting as definition of a religious crime was the Nicene Creed, and religious crime since IV century was a set of ideas and actions denying and discrediting it.

The religious crime was treated as "public, harmful to everybody". The persons, who made it, in the majority of laws were called "rebels and violators of the church world, the state traitors". They were the subject of immediate punishment.

The actions and ideas infringing on interests and position of Christian Church, its attendants and ordinary believers, attempts at doctrines of Christian religion in its Nicene option were considered as the crimes directed against bases of the Roman state (*Kuzishchina, 2005*).

The authorities could apply the following punishments for it: proscription (inclusion in the special list of the outlawed persons), hard labor, exile out of the Roman state, confiscation of property, corporal punishments, degrading, prohibition on occupation of certain positions, derogation in hereditary legal capacity, penalty.

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